

EXHIBIT 5

Medicare Quarterly Provider Compliance Newsletter **Guidance to Address Billing Errors 4**

CENTERS FOR MEDICARE AND MEDICAID SERVICES (April 2013)

<https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/MedQtrlyComp-Newsletter-ICN908625.pdf>

Pages 1, 4-5

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

UNITED STATES OF AMERICA, *ex rel*, et al
Caleb Hernandez and Jason Whaley, Relators,

Plaintiffs

vs.

TEAM HEALTH HOLDINGS, INC., et al

Defendants.

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No. 2:16-cv-00432-JRG

AFFIDAVIT OF TARISA DEAN

I, Tarisa Dean, hereby declare and state as follows:

1. I am a paralegal with the law firm of Nix Patterson, LLP.
2. Attached as Exhibit 5 is a true and correct copy of a document titled “Medicare Quarterly Provider Compliance Newsletter: Guidance to Address Billing Errors”; (Volume 3, Issue 3 – April 2013 [Revised])” published by the Centers for Medicare and Medicaid Services (“CMS”). This document was obtained from the CMS website at: <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-NetworkMLN/MLNProducts/Downloads/MedQtrlyComp-Newsletter-ICN908625.pdf>.

I hereby declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Executed on January 31, 2019.



Tarisa Dean

State of Texas §
County of Travis §

SWORN AND SUBSCRIBED TO before me, a Notary Public, by Tarisa Dean on
January 31, 2019.





Notary Public

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services



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Medicare Quarterly Provider Compliance Newsletter

Guidance to Address Billing Errors



Volume 3, Issue 3 - April 2013 (Revised)

ICN 908625/ April 2013

Comprehensive Error Rate Testing (CERT) Finding: Split/Shared Evaluation & Management Services

Provider Types Affected: Physicians and Non Physician Practitioners (NPP)

Background: A Split/Shared service is an encounter in which a physician and an NPP, such as a Nurse Practitioner (NP), Physician Assistant (PA), Clinical Nurse Specialist (CNS), or Certified Nurse-Midwife (CNM)) each personally perform a substantive portion of an Evaluation/Management (E/M) visit face-to-face with the same patient on the same date of service.

Problem Description: The most common cause of improper payments identified for these claim types was insufficient documentation errors. Most of these errors were due to insufficient documentation to support that both the physician and NPP performed a substantive portion of the split/shared E/M service.

Example: A split/shared E&M claim was submitted for payment. While the submitted documentation contained a physician's signature on the NPP's clinical note, no other documentation was made by the physician supporting that the physician performed a substantive portion of the split/shared E&M service. This claim was scored an improper payment due to an "insufficient documentation error."

Guidance on How Providers Can Avoid These Problems:

As noted in the Medicare Fee-for-Service 2011 Improper Payments Report (found at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/CERT/CERT-Reports-Items/MedicareFFS2011CERTReport.html> on the CMS website), a major

driver of E/M improper payments during the 2011 reporting period was insufficient documentation. "If it isn't documented, it hasn't been done" is an adage that is frequently heard in the health care setting. (Quoted from the Evaluation and Management Services Guide, which you can find at <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNEdWebGuide/EMDOC.html> on the CMS website).

As mentioned above, a split/shared E/M visit is defined by Medicare Part B payment policy as a medically necessary encounter with a patient in which both the physician and a qualified NPP (who must be in the same group practice or be employed by the same employer) personally perform a substantive portion of the E/M visit face-to-face with the same patient, on the same date of service. A substantive portion of an E/M visit involves all, or some portion of, the

history, exam, or medical decision making (all key components of an E/M service).

The split/shared E/M visit applies only to selected E/M visits and settings (hospital inpatient, hospital outpatient, hospital observation, emergency department, hospital discharge, office and non-facility clinic visits, and prolonged visits associated with these E/M visit codes). The split/shared E/M policy does not apply to critical care services or procedures and a split/shared E/M visit cannot be reported in the SNF/NF setting.

(For more information regarding split/shared E/M policy issues, please refer to the "Medicare Claims Processing Manual," Chapter 12, Section 30.6.13, Subsection H, which you can find at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/clm104c12.pdf> on the CMS website).

The following rules for reporting split/shared E/M services between physicians and NPPs (summarized below) are described in the "Medicare Claims Processing Manual," Chapter 12, Section 30.6.1:

1. In the office/clinic setting, when the physician performs the E/M service, or when the E/M service is a split/shared encounter between the physician and NPP, is provided to an "established" patient, and meets "incident to" requirements; you must report using the physician's National Provider Identifier (NPI) and signature. ("Incident to" a physician's professional services means that the services or supplies are furnished as an integral, although incidental, part of the physician's personal professional services in the course of diagnosis or treatment of an injury or illness).

If "incident to" requirements are not met for the shared/split E/M service, however, the service must be billed under the NPP's NPI and signature.

(You can find more about "incident to" requirements in the "Medicare Benefit Policy Manual," Chapter 15, Section 60.1 at <http://www.cms.gov/Regulations-and-Guidance/Guidance/manuals/Downloads/bp102c15.pdf> on the CMS website.)

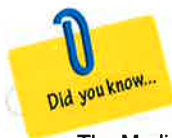
2. When a hospital inpatient/hospital outpatient or emergency department E/M is shared between a physician and an NPP from the same group practice and the physician provides any face-to-face portion of the E/M encounter with the patient, the service may be billed under either the physician's or the NPP's NPI. However, if there was no face-to-face encounter between the patient and the physician, the service may only be billed under the NPP's NPI.

For example, if the NPP sees a hospital inpatient in the morning and the physician follows with a later face-to-face visit with the patient on the same day, either the physician or the NPP may report the service.

Sufficient medical record documentation is the key to proper reimbursement for split/shared evaluation/management services.

Resources:

- ✓ The "Medicare Claims Processing Manual," Chapter 12, Section 30.6.13, Subsection H is available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/clm104c12.pdf> on the CMS website).
- ✓ The "Medicare Benefit Policy Manual," Chapter 15, Section 60.1, is available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/manuals/Downloads/bp102c15.pdf> on the CMS website.
- ✓ The Evaluation and Management (E/M) Services Fact Sheet: Complying with Documentation Requirements is available at http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/Evaluation_Management_Fact_Sheet_ICN905363.pdf on the CMS website.



The Medicare Learning Network® (MLN) has released a new package of products designed to educate physicians and other Medicare and Medicaid providers about medical identity theft and strategies for addressing it. These products include a web-based training course that is approved for Continuing Education (CE) and Continuing Medical Education (CME) credit. For more information, visit the MLN Provider Compliance web page at <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/ProviderCompliance.html> and click on the 'Medicaid Program Integrity: Safeguarding Your Medical Identity Educational Products' link under 'Downloads' at the bottom of the page.